

REMARKS

This response is filed concurrent with a Request for Continued Examination and a Supplemental Information Disclosure Statement. After entry of this amendment, claims 15 to 31 and 33 to 40 will be pending. Claim 32 had been canceled, without prejudice. Claims 15, 19, 23, 27, 31 and 33 are amended herein. Claims 37 to 40 are newly added. No new matter has been added to the application.

Applicants thank the Examiner for the consideration provided in the telephonic interviews held on June 27 and July 6, 2007, and for subsequently providing Interview Summaries regarding same. The Interview Summaries provide the results of the Pre-Appeal Brief Conference, and indicate that the rejection under 35 U.S.C. § 112 would be withdrawn. The summaries also indicates that claims 31 to 35 were considered to contain allowable subject matter.

In view of the indication that claims 31 to 35 contain allowable subject matter, Applicants have amended the claims of the instant application to incorporate the elements of claim 31 into the independent claims. Accordingly, Applicants respectfully submit that all of the pending claims, as amended herein, are likewise directed to allowable subject matter.

Rejections Under Doctrine of Obviousness-Type Double Patenting

The Office Action also includes several rejections under the judicially created doctrine of obviousness-type double patenting. Although the subject matter claimed in the instant application is patentably distinct from the subject matter claimed in the cited patents and applications, in the interest of advancing prosecution of this application to allowance, Applicants enclose herewith Terminal Disclaimers over copending U.S. Application Nos. 10/431,059; 10/742,346; 10/761,032; 10/796,397; and U.S. Patent No. 6,776,796. The submission of these Terminal Disclaimers is not, nor should it be construed as, an admission that Applicants consider any claim of the instant application to be patentably indistinct over any claim in any of the disclaimed patents and/or applications.

With regard to the rejection over U.S. Patent No. 6,808,536, Applicants respectfully traverse. The pending claims are patentably distinct from the claims of the '536 patent claims

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because, for example, such claims do not disclose or suggest either Applicants' claimed dosage of rapamycin or analog or the claimed in-stent late loss in diameter at 12 months following implantation in a human of less than about 0.5 mm, as measured by quantitative coronary angiography. Accordingly, Applicants request that the obviousness-type double patenting rejection over the '536 patent be withdrawn.

CONCLUSION

The foregoing represents a *bona-fide* attempt to address all issues raised in the Office Action dated February 22, 2007. Applicants respectfully submit that the pending claims are in condition for allowance. Accordingly, a Notice of Allowance for all of pending claims 15 to 31 and 33 to 40 is respectfully requested.

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